




Doc. 1000-AP.PRE.REQ

Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number.

PTO/SB/33 (07-05)  
Approved for use through xx/xx/200x. OMB 0651-00xx  
U.S. Patent and Trademark Office; U.S. DEPARTMENT OF COMMERCE

PRE-APPEAL BRIEF REQUEST FOR REVIEW		Docket Number (Optional) 0879-0249P									
	Application Number 09/492,382-Conf. #9804	Filed January 27, 2000									
	First Named Inventor Tetsuro ASHIDA										
	Art Unit 2612	Examiner J. M. Villecco									
<p>Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request.</p> <p>This request is being filed with a notice of appeal.</p> <p>The review is requested for the reason(s) stated on the attached sheet(s). Note: No more than five (5) pages may be provided.</p> <p>I am the</p> <table><tr><td><input type="checkbox"/></td><td>applicant /inventor.</td></tr><tr><td><input type="checkbox"/></td><td>assignee of record of the entire interest. See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed. (Form PTO/SB/96)</td></tr><tr><td><input type="checkbox"/></td><td>attorney or agent of record. Registration number _____</td></tr><tr><td><input checked="" type="checkbox"/></td><td>attorney or agent acting under 37 CFR 1.34. Registration number if acting under 37 CFR 1.34. <u>32,181</u></td></tr></table> <div><div> Signature for Marc S. Weiner Typed or printed name</div><div><u>(703) 205-8000</u> Telephone number <u>April 11, 2006</u> Date</div></div>				<input type="checkbox"/>	applicant /inventor.	<input type="checkbox"/>	assignee of record of the entire interest. See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed. (Form PTO/SB/96)	<input type="checkbox"/>	attorney or agent of record. Registration number _____	<input checked="" type="checkbox"/>	attorney or agent acting under 37 CFR 1.34. Registration number if acting under 37 CFR 1.34. <u>32,181</u>
<input type="checkbox"/>	applicant /inventor.										
<input type="checkbox"/>	assignee of record of the entire interest. See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed. (Form PTO/SB/96)										
<input type="checkbox"/>	attorney or agent of record. Registration number _____										
<input checked="" type="checkbox"/>	attorney or agent acting under 37 CFR 1.34. Registration number if acting under 37 CFR 1.34. <u>32,181</u>										
<p>NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required. Submit multiple forms if more than one signature is required, see below*.</p> <table><tr><td><input type="checkbox"/></td><td>*Total of <u>1</u> forms are submitted.</td></tr></table>				<input type="checkbox"/>	*Total of <u>1</u> forms are submitted.						
<input type="checkbox"/>	*Total of <u>1</u> forms are submitted.										



Examiner has made clear errors in interpreting and applying the appropriate tests and applying the prior art in rejecting claims 1, 2, and 6-8 under 35 U.S.C. § 103(a) as being unpatentable over *Moorman* (USP 5,041,911) in view of *Ueno et al.* (USP 5,625,415); and rejecting claim 9 under 35 U.S.C. § 103(a) as being unpatentable over *Moorman* in view of *Ueno et al.* and further in view of *Jackson et al.* (USP 5,164,836).

**The Examiner has Failed to Establish Prima Facie Obviousness  
by Failing to Provide Adequate Motivation for the Purported Combination**

The Examiner has made clear error in asserting there is proper motivation for combining the teachings of *Ueno et al.* with the teachings of *Moorman* to render claims 1, 2, and 6-8 obvious. Applicant maintains that there is no motivation to combine the teachings of the cited references as purported by the Examiner.

In support of the Examiner's rejection of claim 1, the Examiner asserts that *Moorman* discloses a user being able to make a determination as to how well an image is exposed and that a user may make adjustments based upon the output of the gradation-divided area. The Examiner admits that *Moorman* fails to teach a system being able to select a gradation area and correct the image data or the exposure control based on the selected gradation area. The Examiner relies on the teachings of *Ueno et al.* to cure the deficiencies of the teachings of *Moorman* asserting *Ueno et al.* teaches a user being able to select an area within an image to perform exposure control. The Examiner concludes that one skilled in the art would be motivated to allow a user of the camera of *Moorman* to select an area of the color-coded image for which to perform a proper exposure so that the user can compose an image with a proper exposure based on the selected gradation level. Applicant respectfully submits that these references are not properly combinable.

The disclosure of *Moorman* is directed to an exposure metering system that maps electrical signals into a desired metric for display according to the exposure of individual pixel values of a focused image. In contrast, the disclosure of *Ueno et al.* is directed to a processing apparatus that calculates an exposure value from image data representative of a pre-shot image on the basis of a user selected area. In other words, the user selection of an area as disclosed in *Ueno et al.* takes place pre-shot and prior to when the mapping of *Moorman* takes place. As such, Applicant maintains one skilled in the art would not be motivated to modify the teachings of *Moorman* to provide for enabling selecting a gradation area and correcting the image data or the exposure control based on the selected gradation area, as purported by the Examiner, as *Moorman's* mapping takes place *after* the calculation of an exposure value from image data representative of the pre-shot image.

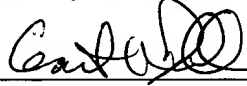
It is respectfully submitted that claims 2-4 are allowable for the reasons set forth above with regard to claim 1 at least based upon their dependency on claim 1. It is further respectfully submitted that claims 6 and 7 contain elements similar to those discussed above with regard to claim 1 and, thus, these claims, together with claims dependent thereon, are allowable over the references as cited for the reasons set forth above with regard to claim 1.

**Conclusion**

If necessary, the Commissioner is hereby authorized in this, concurrent, and future replies, to charge payment or credit any overpayment to Deposit Account No. 02-2448 for any additional fees required under 37 C.F.R. §§ 1.16 or 1.17; particularly, extension of time fees.

Dated: April 11, 2006

Respectfully submitted,

By  #43575  
Marc S. Weiner *for*

Registration No.: 32,181

BIRCH, STEWART, KOLASCH & BIRCH, LLP

8110 Gatehouse Rd

Suite 100 East

P.O. Box 747

Falls Church, Virginia 22040-0747

(703) 205-8000

Attorney for Applicant